

U.S. ARMY PROCUREMENT POLICY ALERT BULLETIN

NO. 96-007

July 25, 1996

The enclosed documents are forwarded for your information and any necessary implementation in advance of formal publication of a Federal Acquisition Circular (FAC), or Defense Acquisition Circular (DAC). There will be no Department of the Army-level supplementation or implementing instructions.

ENCLOSURES:

- 1. Assistant Deputy Under Secretary of Defense (Materiel and Distribution Management) Memorandum, Subject: Acquisition Process for Metalworking Machinery (Federal Supply Group 34), May 13, 1996.**
- 2. DPP Memorandum, Subject: Small Disadvantaged Business Concerns, D.L. 96-009, April 29, 1996.**
- 3. DPP Memorandum, Subject: Cost Reimbursement Rules for Indirect Costs - Private Sector, D.L. 96-011, May 13, 1996.**
- 4. DPP Memorandum, Subject: Determination of Need for Use of No-Setoff Provision (Alternate I) Under the Clause at FAR 52.232-23, Assignment of Claims, June 17, 1996.**
- 5. Principal Deputy Under Secretary of Defense (A&T) Memorandum, Subject: Acquisition of Information in Digital Format, June 4, 1996.**
- 6. Delegation of Authority - Randolph-Shepard Act, SARDA-96-5, June 18, 1996.**
- 7. Contracting officers who award and administer service contracts that require delivery of reports and other data are reminded to -**
 - Ensure that all contract deliverables; i.e., items to be delivered or services to be performed, are included in the schedule for supplies or services and not only in the statement of work. Reports and other data items may also be listed individually on the Contract Data Requirements List (CDRL), DO Form 1423, and the CDRL listed as a contract line item. This will make it easier for offerors and contractors and Government personnel to know what items or services will be delivered or performed.**
 - Ensure that documentation regarding contractor performance is retained in an official contract file for the period specified in FAR 4.805. This is necessary to substantiate that contractors delivered that required products and performed the required services, and that the Government made proper payments to contractors.**

required services, and that the Government made proper payments to contractors.

-- Have requiring activities and other users establish reasonable retention periods for data delivered under a contract that are sufficient to substantiate that the required products were received.

This bulletin is issued by the U.S. Army Contracting Support Agency. Comments or questions should be referred to the Policy and Procedures Division, SFAE-CSA-PP, 5109 Leesburg Pike, Suite 916, Falls Church, Virginia 22041

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Bulletin 96-007 consists of 18 pages.

Release Approved By: Rak



**OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000**



13 MAY 1996


(L/MDM)

MEMORANDUM FOR OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
(RESEARCH, DEVELOPMENT, AND ACQUISITION)
OFFICE OF THE ASSISTANT SECRETARY OF THE NAVY
(RESEARCH, DEVELOPMENT, AND ACQUISITION)
OFFICE OF THE ASSISTANT SECRETARY OF THE AIR FORCE
(ACQUISITION)

SUBJECT: Acquisition Process for Metalworking Machinery
(Federal Supply Group 34)

Recent inquiries from DoD field activities indicate that clarification is required in regard to the acquisition process for metalworking machinery (Federal Supply Group 34). The DoD Inspector General audit report 96-087, "Acquisition Process for Metalworking Machinery," dated March 26, 1996, discusses on page 8 the wide latitude granted customers through exceptions to the coordinated acquisition assignments (Defense Supply Center Richmond for FSG 34). Among the exceptions to coordinated acquisition detailed in DFARS 208.7003-2 are: (1) items obtained through sources in FAR 8.001 down to and including optional Federal Supply Schedules; (2) requirements not in excess of the simplified acquisition threshold (currently \$100,000) in FAR part 13; and (3) one-time buys of a noncataloged item.

Since the DoDIG audit report describes advantages in cost and timeliness that can result from use of the exceptions to coordinated acquisition for FSG 34, I request that your offices ensure that impediments to the use of those exceptions by your field activities are removed. Tom Carter may be reached at (703) 697-5216 if there are questions. Thank you for your assistance in this matter.


James B. Emahiser
Assistant Deputy Under Secretary
(Material and Distribution
Management)



OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000
APRIL 29, 1996



DP (DAR)

In reply refer to
DFARS Case: 95-D039
D.L. 96-009

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN (RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA (RD&A) / SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Small Disadvantaged Business Concerns

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement initiatives designed to facilitate awards to small disadvantaged businesses (SDBs) while taking account of the Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, 63 U.S.L.W. 4523 (U.S. June 12, 1995).

The attached final rule includes contracting procedures that: (1) expand the use the evaluation factor for SDBs, to include competitive awards based on other than price or price related factors; (2) consider small, small disadvantaged, and women-owned small business subcontracting as a factor in the evaluation of past performance; (3) clarify that the contracting officer will weigh enforceable commitments to use small businesses, SDBs, women-owned small businesses, and historically black colleges and universities, and minority institutions more heavily than non-enforceable ones, if the commitment to use such firms is included in the solicitation as a source selection criterion; (4) require prime contractors to notify the contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan; and (5) establish a test program of an SBD evaluation preference that would remove bond cost differentials between SDBs and other businesses as factor in most source selections for construction acquisitions.

This DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft Belvoir

PART 215-CONTRACTING BY NEGOTIATION

* * * * *

SUBPART 215.6--SOURCE SELECTION

215.605 Evaluation factors [and subfactors].

(b) * * *

(ii) * * *

(B) The extent of commitment to use such firms [(for example, enforceable commitments are to be weighted more heavily than non-enforceable ones)];

* * * * *

(E) [When not otherwise required by 215.608(a)(2),] Prior [past] performance of offerors ~~in complying with requirements of the clauses at FAR 52. 219-8, Utilization of Small [,] business concerns and Small Disadvantaged [and Women-Owned Small] Business Concerns, and 52.219-9, Small [, Small Disadvantaged and Women-Owned Small] Business and Small Disadvantaged Business Subcontracting Plan; and~~

* * * * *

[(iv) When an evaluation includes the criterion in paragraph (b) (ii)(A) of this section, the small, small disadvantaged, or women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219-9 to facilitate compliance with 252.219-7003(g).]

* * * * *

215. 608 Proposal evaluation.

(a) [(1)] * * *

[(2)] When a past performance evaluation is required by 15.605, and the solicitation includes the clause at FAR 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the evaluation shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219-9, Small, Small Disadvantaged and Woman-Owned Small Business Subcontracting Plan, the evaluation shall include the past performance of offerors in complying with requirements of that clause.]

* * * * *

PART 219-SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS SMALL BUSINESS PROGRAMS]

219.704 Subcontracting plan requirements

(a) * * *

[(4) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses prime contractors shall notify the administrative contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.]

219.1006 Procedures.

(b) * * *

(1) * * *

(B) The evaluation preference at 219.70 shall not be used. [However, note the test program at 219.72 for construction acquisitions]

* * * * *

219.7001 Applicability.

~~_____ (a) The evaluation preference shall be used in competitive acquisitions where award is based on price and price related factor. The preference may be used at the discretion of the course selection authority in other competitive acquisitions [except as provided in paragraph (b) of this section and in 219.1006 (b) (1) (B)].~~

* * * * *

[219.72--EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS (SDB) CONCERNS IN CONSTRUCTION ACQUISITIONS--TEST PROGRAM

219.7200 Policy.

DoD policy is to ensure that, during this test program, offers from small disadvantaged business (SUB) concerns shall be given an evaluation preference in construction acquisitions.

219.7201 Administration of the test program.

The test program will be conducted over a 36-month period. The test program will be conducted by all DoD contracting activities that award construction contracts. The focal point for the test program is the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology (Director, SADBUE) The military departments and defense agencies shall submit status reports to the Director, SADBUE. The first status report shall be submitted 18 months after initiation of the test program: the second status report shall be submitted 36 months after initiation of the

test program. These reports shall specify the impact of the evaluation preference over each of the reporting periods of the test program, and shall provide recommendations with respect to continuation and/or modification of the evaluation preference.

219.7202 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions for construction (see definition in FAR Subpart 36.1) when work is to be performed inside the United States, its territories or possessions, Puerto Rico, the trust Territory of the Pacific Islands, or the District of Columbia.

(b) Do not use the evaluation preference in acquisitions which--

- (1) Are less than or equal to the simplified acquisition threshold;
- (2) Are set aside for small businesses: or
- (3) Are awarded under section 8(a) procedures.

(c) The evaluation preference need not be applied when the head of the contracting activity determines that the evaluation preference is having a disproportionate impact on non-SDB concerns or non-disadvantaged small business concerns.

219.7203 Procedures.

(a) Solicitations that require bonding shall require offerors to separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(b) Evaluate total offers. If the apparently successful offeror is an SDB concern, no preference-based evaluation is required under this subpart.

(c) If the apparently successful offeror is not an SDB concern, evaluate offers excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, add bond costs back to all offers, and give offers from SDB concerns a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except--

(1) Offers from SDBs which have not waived the evaluation preference; and

(2) Offers from historically black colleges and universities or minority institutions, which have not waived the evaluation preference.

(d) When using the procedures in 236.303-70, Additive or deductive items, the evaluation preference in this subpart shall be applied.

219.7204 Contract clause.

Use the clause at 252.219-7008, Notice of Evaluation Preference for Small Disadvantaged Business Concerns--Construction Acquisitions--Test Program, in all solicitations--

- (1) That involve the evaluation preference of this subpart; and

(2) Where work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.]

* * * * *

PART 236--CONSTRUCTION AND ARCHITECT- ENGINEER CONTRACTS

* * * * *

236.303-70 Additive or deductive items.

* * * * *

(c)* * * * *

(2) Evaluate all bids [, including those using the procedures in 219.7203,] on the basis of the same additive or deductive bid items.

* * * * *

PART 242--CONTRACT ADMINISTRATION

[SUBPART 242.15--Contractor Performance Information

242.1503 Procedures.

Evaluations should consider any notifications submitted under paragraph (g) of the clause at 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts).]

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PART 252--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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252. 219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts).

* * * * *

SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (APR 1996)

* * * * *

[(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable

terms listed in the subcontracting plan. Requirements shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.]

* * * * *

[252.219-7008 Notice of Evaluation Preference for Small Disadvantaged Business Concerns--Construction Acquisitions--Test Program. As prescribed in 219.7204, use the following clause:

NOTICE OF EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS
CONCERNS--CONSTRUCTION ACQUISITIONS--TEST PROGRAM (APR 1996)

(a) Definitions

As used in this clause-

"Historically black colleges and universities (HBCUs)," means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority institutions," means institutions meeting the requirements of paragraphs (3), (4), and (5) of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

"Small disadvantaged business (SDB) concern," means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) Evaluation preference

(1) Offerors shall separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(2) Offers will be evaluated initially based on their total prices. If the apparently successful offeror is an SDB concern, no preference-based evaluation will be conducted.

(3) If the apparently successful offeror is not an SDB concern, offers will be evaluated based on their prices excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, bond costs will be added back to all offers, and offers from SDB concerns will be given a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except-

(i) Offers from SDBs which have not waived the evaluation preference; and

(ii) Offers from HBCUs or minority institutions, which have not waived the evaluation preference

preference.

(c) Waiver of evaluation preference.

A small disadvantaged business, historically black college or university, or minority institution offeror may elect to waive the preference. The agreements in paragraph (d) of this clause do not apply to offers which waive the preference.

_____ Offeror elects to waive the preference.

(d) Agreements.

A small disadvantaged business concern, historically black college or university, or minority institution offeror, which did not waive the preference, agrees that in performance of the contract, in the case of a contract for-

(i) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(ii) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(End of clause)

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PART 253 - - FORMS

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253.204-70 DD Form 350, Individual Contracting Action Report .

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(e) * * *

(3) Block E3, Next Low Offer.

(i) Complete Block E3 only if Block E2 is completed.[, or the evaluation preference for small disadvantaged business concerns in construction acquisitions set forth in Subpart 219.72 is applied.] Otherwise, leave Block E3 blank.

(ii) [If Block E2 is completed, e] Enter the offered price from the small business firm that would have been the low offeror if qualified nonprofit agencies employing people who are blind or severely disabled had not participated in the acquisition. [If the evaluation preference for small disadvantaged business concerns in construction acquisitions set forth in Subpart 219.72 is applied, enter the offered price from the non-SDB concern that would have been the successful offeror if the evaluation preference had not been applied.] Enter the amount in whole dollars.

* * * * *



OFFICE OF THE UNDER SECRETARY OF DEFENSE
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May 139, 1996



DP (DAR)

In reply refer to
DFARS Case: 96-D303
D.L. 96-011

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN (RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA (RD&A) / SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Cost Reimbursement Rules for Indirect Costs - Private Sector

We have amended Part 231 of the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 808 of the FY 1996 Defense Authorization Act (Pub. L. 104-106). Section 808 permits the DoD to enter into a defense capability preservation agreement with a defense contractor where it would facilitate the achievement of the policy objectives relating to defense reinvestment, diversification, and conversion set forth in 10 U.S.C. 2501(b). Such an agreement would permit the contractor to claim certain indirect costs, attributable to its private sector work, on its defense contracts.

This interim DFARS rule is effective immediately and will be published in a future Defense Acquisition Circular.

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir

PART 231--CONTRACT COST PRINCIPLES AND PROCEDURES

* * * * *

SUBPART 231.2--CONTRACTS WITH COMMERCIAL ORGANIZATIONS

* * * * *

[231.205-71 Defense capability preservation agreements.

(a) Scope and authority.

Where it would facilitate the achievement of the policy objectives relating to defense reinvestment, diversification, and conversion set forth in 10 U.S.C. 2501(b), DoD may enter into a "defense capability preservation agreement" with a contractor. As authorized by Section 808 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), such an agreement would permit the contractor to claim certain indirect costs attributable to its private sector work as allowable costs on its defense contracts.

(b) Procedure .

A contractor may submit a request for such an agreement, together with appropriate justification, through the Assistant Secretary of Defense for Economic Security, to the Under Secretary of Defense for Acquisition and Technology, who has exclusive approval or disapproval authority. The contractor should also provide an informational copy of any such request to the cognizant administrative contracting officer.]



OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000
June 17, 1996



DP / CPF

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN (RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA (RD&A) / SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Determination of Need for Use of No-Setoff Provision (Alternate I) Under the Clause at
FAR 52.232-23, Assignment of Claims

On October 3, 1995, the President delegated the authority to make determinations of need to the Secretary of Defense. In accordance with delegations from the Secretary, and Under Secretary for Acquisition and Technology, I have executed a determination of need. You are to resume use of Alternative I to the clause at 52.232-23, "Assignment of Claims," in accordance with the Defense Federal Acquisition Regulation Supplement 232.806(a) (2).

Eleanor R. Spector
Director, Defense Procurement



**PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE
3015 DEFENSE PENTAGON
WASHINGTON DC 20301-3015**



4 JUNE 1996

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN, JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTORS, DEFENSE AGENCIES

SUBJECT: Acquisition of Information in Digital Format

The acquisition of data in digital format offers numerous benefits to the Department, most which translate directly into cost savings. To take full advantage of these benefits, I ask you to ensure your existing contracts are reviewed for data delivery format and, where non-digital formats are specified, that you modify your contracts to require digital format when it is mission-effective and cost-effective to do so.

Many existing contracts pre-date digital requirements and specify data delivery on paper, aperture cards, and microfiche. More often than not, these may be changed to digital format with no loss in customer suitability and security, and with all of the accompanying gain in supportability and cost savings. Naturally, changes to digital format must be compatible with Government information processing systems, but contractor data systems and formats should be used whenever they satisfy program needs.

I realize many agencies have already begun moving in this direction, but to gain speed and consistency I believe we should pursue a more formal effort. Please communicate this to your program managers and contracting officers. Monitor their progress and give them your enthusiastic support---this is a good source of savings and efficiency.


R. Noel Longueville



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH DEVELOPMENT AND ACQUISITION
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18 JUN 1996

REPLY TO ATTENTION OF

SARDA-96-5

DELEGATION OF AUTHORITY
RANDOLPH-SHEPARD ACT

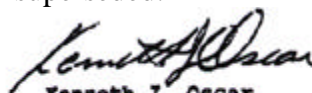
Reference AR 210-25, Vending Facility Program for the Blind on Federal Property, which implements the Randolph-Shepard Act (20 USC 107).

When a cafeteria is to be operated by contract, paragraph 5. of AR 210-25 lists several instances where the installation commander must confer or coordinate with, or obtain the concurrence of, HQDA. The OASA

(RDA) is the organization that performs this HQDA function.

This delegation of authority authorizes Principal Assistants Responsible for Contracting to act for the OASA(RDA) in dealings with the installation commander when required by paragraph 5. of AR 210-25.

This delegation shall not be redelegated, is effective immediately and shall remain in effect until specifically rescinded or superseded.


Kenneth J. Oscar
Deputy Assistant Secretary of the Army
(Procurement)

